

Federal taxes are deductible from gross receipts for purposes of calculating Retailers' Occupation Tax (sales tax) when the seller is required by federal law to collect such taxes from his customers and to remit such taxes directly to the federal government. Please refer to 86 Ill. Adm. Code 130.445. (This is a GIL).

October 4, 2000

Dear Xxxxx:

This letter is in response to your letter dated May 11, 2000. As we discussed in our recent telephone conversation, the fact that several ST-556 Returns and Notices of Assessment are pending on this matter require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c) that can be accessed on the Department's Web site at <http://www.revenue.state.il.us/legalinformation/regs/part1200>).

In your letter, you have stated and made inquiry as follows:

TAXPAYER hereby submits a Private Letter Ruling Request to the Illinois Department of Revenue (the 'Department') pursuant to 2 Ill. Adm. Code, Ch. I, Sec. 1200.110

FACTS

TAXPAYER sells certain 'tractors', as that term is defined in the Federal Excise Tax ('FET') regulations, directly to end-users customers. The Department has erred by assessing sales tax on the FET portion of the price of certain of these direct retail 'tractor' sales. Copies of the assessments for this issue TAXPAYER has received thus far are attached. The Department has indicated more assessments on this issue are likely forthcoming. The error appears to be related to confusion created by the Department's publication ST-9, A Guide for Reporting Sales Using Form ST-556, Sales Tax Transaction Return. The Department has assessed sales tax on certain direct 'tractor' sales apparently based on the erroneous belief that such 'tractors' are 'trucks' under the FET regulations. The attached FET regulation 145.4051-1(e) indicates that 'trucks' generally carry their loads, and 'tractors' generally pull their loads. However, regardless of this distinction, it is irrelevant under Illinois' sales tax regulations whether the items at issue are 'tractors' or 'trucks' under the FET. The fact that TAXPAYER is required to collect FET on these retail 'tractor' sales removes the FET portion of the sales price from the Illinois sales tax base.

ISSUE

Whether under 86 Ill. Adm. Code 130.445 a taxpayer may deduct in computing Retailers' Occupation Tax liability the Federal Excise Tax the taxpayer must collect and remit on the first retail sale of tractors under Internal Revenue Code ('IRC') Sec. 4051.

ANALYSIS

IRC Sec. 4051 provides, in relevant part:

- (1) 'In general. There is hereby imposed on the first retail sale of the following articles (including in each case parts or accessories sold on or in connection therewith or with the sale thereof) a tax of 12 percent of the amount for which the article is so sold:
 - (A) Automobile truck chassis.
 - (B) Automobile truck bodies
 - (C) Truck trailer and semitrailer chassis.
 - (D) Truck trailer and semitrailer bodies.
 - (E) Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.'

The FET imposed under IRC Sec. 4051 for the tractors sold at issue is imposed on TAXPAYER. The 'first retail sale' under Sec. 4051 is 'the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation.' IRC Sec. 4052(a)(1). Therefore, for FET purposes, the 'first retail sale' of the tractors at issue is the direct sale of the tractors by TAXPAYER to the end user customers.

86 Ill. Adm. Code 130.445(a)(2) clearly allows TAXPAYER to deduct the FET on the retail sales of the tractors at issue. 86 Ill. Adm. Code 130.445(a)(2) provides:

'[I]n computing Retailers' Occupation Tax liability, a person making such computation may deduct an amount equivalent to Federal excise taxes which he pays directly to the Federal Government if such Federal tax is an excise tax imposed upon tangible personal property when sold at retail as distinguished from tangible personal property sold by a wholesaler, an importer, a manufacturer or other producer.' (emphasis added).

The sale by TAXPAYER of the tractors at issue is a retail sale which is subject to Federal Excise Tax under IRC Sec. 4051.

The confusion of the Department on this issue most likely relates to the Department's publication ST-9, A Guide for Reporting Sales Using Form ST-556, Sales Tax Transaction Return. The relevant page of that guide is attached. The guide indicates that generally federal excise taxes must be included in the total price subject to tax, but lists certain exceptions for trucks weighing 33,000 pounds or more and trailers or semitrailer chassis weighing 26,000 pounds or more. 'Tractors', like the ones at issue sold by TAXPAYER, are not mentioned in the guide, which may be causing the Department to believe the FET tax on 'tractors' must be included in the sales price subject to tax. However, as explained above the tractors sold by TAXPAYER were 'sold

October 4, 2000

at retail' such that the FET is not subject to sales tax pursuant to 86 Ill. Adm. Code 130.445(a)(2).

Pursuant to 2 Ill. Adm. Code 1200.110, taxpayer represents to the Department that to the best of the knowledge of taxpayer the Department has not previously ruled on the same or similar issue for the taxpayer or any predecessor of taxpayer, and that to the best of taxpayer's knowledge neither taxpayer nor any representative of taxpayer has previously submitted the same or similar issue to the Department but withdrew it before a letter ruling was issued.

Federal taxes are deductible from gross receipts for purposes of calculating Retailers' Occupation Tax (sales tax) when the seller is required by federal law to collect such taxes from his customers and to remit such taxes directly to the federal government. Please refer to 86 Ill. Adm. Code 130.445, enclosed. Accordingly, the federal excise tax of 12 % on sales of "Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer" imposed by 26 U.S.C. 4051(a)(1) is deductible because it is imposed on the tractor's first retail sale. Tractors are subject to this federal excise tax without regard to gross vehicle weight.

As a result, if you sell tractors subject to the federal excise tax imposed by 26 U.S.C. 4051(a)(1), you may take a deduction for that amount from your gross receipts that are subject to Retailers' Occupation Tax and Use Tax. Regarding the ST-556 returns and related Notices of Assessment (NOAs) about which you have made inquiry, we in the Legal Services Office have not seen the ST-556 returns upon which the NOAs are based. Consequently, we cannot definitively say that what you are selling is subject to the FET imposed by 26 U.S.C. 4051. We also note there appear to be some tax, penalty, and interest amounts on some of the NOAs that are not related to FET.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.